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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 IN RE: TFT-LCD (FLAT PANEL)
14 ANTITRUST LITIGATION

No. 3:07-md-1827-SI

MDL No. 1827

16 *Best Buy Co., Inc., et al. v. AU Optronics Corp.,*
17 *et al.*, No. 10-cv-4572 SI

18 *Best Buy, et al. v. Toshiba, et al.*,
19 No. 12-cv-4114 SI

**HANNSTAR DISPLAY
CORPORATION'S NOTICE OF
MOTION AND MOTION TO VACATE
JUDGMENT PURSUANT TO FED. R.
CIV. P. 60(b)**

20 Date: November 1, 2013
21 Time: 9:00 a.m.
Courtroom 10, 19th Floor
22 Judge: Hon. Susan Illston

1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE** that on November 1, 2013, at 9:00 a.m., or as soon thereafter
 4 as the matter may be heard, before The Honorable Susan Illston, defendant HannStar Display
 5 Corporation (“HannStar”) will, and hereby does, move this Court for an order vacating the
 6 judgment entered on September 4, 2013 (Dkt. 8571) on the grounds (a) that judgment was entered
 7 without consideration of the offset resulting from settlements made by the plaintiffs with other
 8 parties, (b) that the judgment improperly awards damages to the Best Buy plaintiffs, and (c) that
 9 judgment was incorrectly entered in favor of the Best Buy plaintiffs and against HannStar.

10 HannStar’s motion is based on this notice, the pleadings and papers on file in this action,
 11 and such other evidence and argument as may be presented at the hearing on the motion.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 HannStar Display Corporation (“HannStar”) seeks an order vacating the judgment entered
 14 in favor of “the Best Buy plaintiffs” and against HannStar on September 4, 2013 (Dkt. 8571).
 15 The judgment awarded damages to the plaintiffs in the amount of \$7,471,943, the amount set
 16 forth in the jury’s answer to Question 9, but judgment was entered without consideration of the
 17 offset that results from settlements made by the plaintiffs with other parties. HannStar believes it
 18 to be undisputed that the settlement offset exceeds the trebled amount of the Question 9 total, and
 19 that the plaintiffs are therefore not entitled to any damage recovery.

20 The judgment addresses both *Best Buy Co., Inc., et al. v. AU Optronics Corp., et al.*, No.
 21 10-cv-4572 SI and *Best Buy, et al. v. Toshiba, et al.*, No. 12-cv-4114 SI in a single document.
 22 This motion does not address the entry of judgment in favor of the Toshiba defendants. HannStar
 23 seeks to vacate the judgment only insofar as it includes resolution of the dispute between
 24 HannStar and the plaintiffs in No. 10-cv-4572 SI without consideration of the settlement offset.

25 **I. THE COURT SHOULD VACATE THE JUDGMENT.**

26 **A. Legal Authority.**

27 There are six grounds on which a district court may relieve a party from a final judgment
 28 under Federal Rule of Civil Procedure 60(b): (1) “mistake, inadvertence, surprise, or excusable

neglect;” (2) “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);” (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;” (4) “the judgment is void;” (5) “the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable;” and (6) “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(1)-(6). A motion under Rule 60(b) “must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.” Fed. R. Civ. P. 60(c). If made within 28 days of the entry of judgment, the filing of a Rule 60 motion results in a deferral of the time within which an appeal may be filed. Fed. R. App. P. 4(a)(4)(A)(vi).

B. The Plaintiffs Are Not Entitled To An Award Of Damages.

“Mistake” and “inadvertence” under Rule 60(b) include the mistake or inadvertence of a court. *See Kingvision Pay-Per-View Ltd. v. Lake Alice Bar*, 168 F.3d 347, 350 (9th Cir. 1999). HannStar respectfully submits that the judgment was entered by mistake or inadvertence because judgment was entered without consideration of the offset that results from the settlements the plaintiffs made with other parties.

HannStar has received all but two of the settlement agreements between the plaintiffs and other parties. The remaining agreements were to have been produced yesterday, but were not. When HannStar receives a complete collection of the settlement agreements, it will be prepared to file a motion for entry of judgment in its favor and fully substantiate the amount of the settlement offset. There is no doubt and, HannStar believes, no dispute, that the settlement offset results in a conclusion that the plaintiffs are not entitled to recover any damages from HannStar. *See Flintkote Co. v. Lysfjord*, 246 F.2d 368, 397-98 (9th Cir. 1957). HannStar therefore requests that the Court vacate the judgment, and order production of the remaining agreements.

II. CONCLUSION.

For the foregoing reasons, HannStar requests that the Court grant its motion to vacate the judgment.

1 Dated: September 17, 2013

FREITAS TSENG & KAUFMAN LLP

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3 /s/ Robert E. Freitas

Robert E. Freitas

4 Attorney for Defendant
5 HannStar Display Corporation
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